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AUG 10 2001

In re Application of
Vaughn et al.
Filed: 17 June, 1997
Application No. 08/877,684
Attorney Docket No. 96B035/2

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition filed herein on 26 July, 2001, under ¶ "b" of 37 C.F.R. §1.137.¹ to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision under 37 C.F.R. § (e) must be submitted (with fee) within two (2) months from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed

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The regulations at 37 C.F.R. §1.137 provide:

§ 1.137 Revival of abandoned application, terminated reexamination proceeding, or lapsed patent.

(b) *Unintentional*. If the delay in reply by applicant or patent owner was unintentional, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination proceeding terminated under §§1.550(d) or 1.957(b) or (c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in §1.17(m);

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

- (4) Any terminal disclaimer (and fee as set forth in §1.20(d)) required pursuant to paragraph (d) of this section.

(c) *Reply*. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must include payment of the issue fee or any outstanding balance. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

[47 Fed. Reg. 41277, Sept. 17, 1982, effective Oct. 1, 1982; para. (b) 48 Fed. Reg. 2713, Jan. 20, 1983, effective Feb. 27, 1983; paras. (a) - (c), paras. (d) & (e) added, 58 Fed. Reg. 44277, Aug. 20, 1993, effective Sept. 20, 1993; para. (c) revised, 60 Fed. Reg. 20195, Apr. 25, 1995, effective June 8, 1995; revised, 62 Fed. Reg. 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (c) revised, 65 Fed. Reg. 54604, Sept. 8, 2000, effective Sept. 8, 2000; revised, 65 Fed. Reg. 57024, Sept. 20, 2000, effective Nov. 29, 2000]

Petition under 37 C.F.R. § (b).² Thereafter, there will be no further reconsideration of this matter.²

The record indicates that:

- petitioner failed to timely respond to the final Office action mailed on 3 November, 2000, with a shortened statutory deadline of 3 February, 2001 (a Saturday, allowing an acceptable mailing date of 5 February, 2001);
- a three (3) month extension of time and an amendment under 37 C.F.R. 116 were filed on 10 May, 2001 (with a certificate of mailing dated 3 May, 2001) but the amendment was not a proper response to the final Office action, as reflected by the Advisory Action mailed on 23 May, 2001³;
- the application became abandoned at midnight on 3 May, 2001;
- a Notice of Abandonment was mailed on 18 June, 2001.

The petition does not comply with the requirement for a response to the outstanding Action, because the amendment submitted therewith does not clearly place the application in condition for allowance, and because the Request for Continued Examination and required fee referred to in the petition were not received.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner of Patents and Trademarks
Box DAC
Washington, D.C. 20231

² For more than a century punctuality and due diligence, equally with good faith, have been deemed essential requisites to the success of those who seek to obtain the special privileges of the patent law, and they are demanded in the interest of the public and for the protection of rival inventors. See: Porter v. Loudon, 7 App.D.C. 64 (C.A.D.C. 1895), citing Wollensak v. Sargent, 151 U.S. 221, 228, 38 L. Ed. 137, 14 S. Ct. 291 (1894). An invention benefits no one unless it is made public, and the rule of diligence should be so applied as to encourage reasonable promptness in conferring this benefit upon the public. Automatic Electric Co. v. Dyson, 52 App. D.C. 82; 281 F. 586; (C.A.D.C. 1922). Generally, 35 U.S.C. §6; 37 C.F.R. §§1.181, 182, 183.

If, on request for reconsideration, Petitioner fails to satisfy the showings burden required: (a) the resulting decision may be one viewed as final agency action; and (b) the provisions of 37 C.F.R. §1.137(e) will not apply to that decision.

³ The proper response to the final Office action (see: Fn. 1, item (1); MPEP 711.03(c)) must be in the form of: (a) an amendment *prima facie* placing the application in condition for allowance; (b) a Notice of Appeal; or (c) a continuing application.

By FAX: (703) 308-6916
Attn: Office of Petitions

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Telephone inquiries concerning this matter may be directed to Kathy Matecki
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